JUL 9 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1940

No. 226

WILLIAM DOSTER NOLAND,

Petitioner,

vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

CALVIN S. MAUK,
Suite 305-306 Continental Building,
408 South Spring Street, Los Angeles, California,
Counsel for Petitioner.

CALVIN S. MAUK,
Of Counsel.

Parker & Baird Company, Law Printers, Los Angeles.

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IN THE

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No.....

WILLIAM DOSTER NOLAND,

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vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF.

To the Honorable Justices, the Supreme Court of the United States:

William Doster Noland, the above named petitioner, prays that a writ of certiorari be issued by this Court to review a judgment of the Circuit Court of Appeals for the Ninth Circuit, entered on the 26th day of April, 1940 [R. 129], affirming a judgment of the United States District Court for the Southern District of California, Central Division; and in this behalf petitioner respectfully shows:

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit was rendered on the 26th day of April, 1940, and is set forth in the record at pages 122 to 128, inclusive.

Statement of the Case.

(1) The Circuit Court of Appeals, Ninth Circuit, affirmed decree of District Court below in the dismissal of complaint in equity without leave to amend [R. 103 to 104].

(2) That on December 13th, 1934, petitioner William Doster Noland and respondent Viola Bubb Noland made and entered into a contract effecting a property settlement between said parties [R. 41 to 45] which settled any and all questions relative to property or property rights of either party to the controversy, and said contract further provided that the respondent Vyola Bubb Noland accepted the sum of $1200.00 as payment in full satisfaction of all claims for alimony, either temporary or permanent, costs or attorney's fees in any action for divorce or separation now pending, or in action, or actions which either party may maintain against the other in the future, and said contract is further accepted by respondent Vyola Bubb Noland, in full satisfaction of any and all claims of every kind, nature and description which said Vyola Bubb Noland now has, or may hereafter have against petitioner William Doster Noland, except as otherwise provided [R. par. Seventh, pp. 43 to 44].

(3) That on the 15th day of December, 1934, the respondent Vyola Bubb Noland procured and had entered of record, a divorce decree in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, which said decree of divorce provided among other things, that petitioner was to be allowed to see and visit his minor child William Doster Noland, Jr., at any and all reasonable times [R. 46 to 48]. Respondent Vyola Bubb Noland, at all times immediately following said decree of divorce rendered by said District Court of the State of Nevada, refused to allow petitioner to see or visit his said minor child, at any time, and after unsuccessful attempts to have the State Courts of California enforce the judgment of the decree of divorce of the said District Court of the State of Nevada, which the said State Courts of California refused to do in compliance with said decree of divorce rendered by said Nevada Court [R. 57 to 68].

(4) That on December 23rd, 1937, petitioner William Doster Noland made an application to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, for an amended decree of divorce [R. 48 to 51] which was decreed and entered by said Nevada Court, wherein petitioner was given custody of his minor child and any and all payments to respondent Vyola Bubb Noland cancelled and stricken from the record, and said respondent refuses to comply with said amended decree of divorce, as adjudicated by said District Court of the State of Nevada.

(5) That on the 14th day of April, 1938, the Superior Court of California renders a judgment against petitioner,

disregarding aforesaid contract and amended decree of divorce by aforesaid District Court of the State of Nevada [R. 52 to 54].

(6) That on June 27, 1939, the State Court of California, issues order to show cause in contempt, disregarding aforesaid contract and amended decree of divorce by aforesaid District Court of the State of Nevada [R. 54 to 55].

(7) That on July 31st, 1939, petitioner William Doster Noland files first amended civil bill of complaint in equity enforcing foreign judgment and for conspiracy, etc., and application for temporary restraining order; temporary injunction and permanent injunction [R. 2 to 78].

(8) That on July 31st, 1939, the District Court of the United States for the Southern District of California, Central Division, issued a temporary restraining order [R. 78 to 80].

(9) That on August 11th, 1939, the District Court of the United States for the Southern District of California, Central Division, issued a temporary injunction [R. 80 to 82].

(10) That on August 17th, 1939, respondent Vyola Bubb Noland filed an affidavit in support of motion to dismiss in aforesaid District Court of the United States, which said affidavit conflicts with the record [R. 86 to 93].

(11) That on August 22nd, 1939, petitioner filed a notice and motion to take pleadings of respondents off the files [R. 93 to 95].

(12) That on September 23rd, 1939, the aforesaid District Court of the United States filed a memorandum of ruling on defendants' motion to dismiss [R. 96 to 103].

(13) That on September 23rd, 1939, the aforesaid District Court of the United States entered a judgment [R. 103 to 104].

(14) That on October 23rd, 1939, petitioner filed notice of appeal to the United States Circuit Court of Appeals, Ninth Circuit [R. 105].

(15) That on November 4th, 1939, petitioner filed assignment of errors [R. 105 to 107].

(16) That on December 5th, 1939, petitioner filed statement of points and designation of documents and proceedings upon which appellant relies upon appeal [R. 109 to 117].

(17) That on April 12, 1940, the United States Circuit Court of Appeals, Ninth Circuit, made an order of submission, and the matter was submitted to the Court for consideration and cause [R. 121].

(18) That on April 26, 1940, the United States Circuit Court of Appeals, Ninth Circuit, made an order directing filing of opinion and filing and recording decree [R. 121], and the Court rendered an opinion [R. 122 to 128] and also a decree of judgment affirming the judgment of the District Court below [R. 125].

(19) That on June 5, 1940, the Circuit Court of Appeals, Ninth Circuit, made an order denying petition for rehearing [R. 130], and,

(20) On June 10, 1940, the Circuit Court of Appeals made an order staying issuance of mandate [R. 130 to 131].

The Questions Presented.

The Circuit Court of Appeals held:

In effect, that the "First Amended Civil Bill of Complaint in Equity" be dismissed without leave to amend upon the ground of not being within the jurisdiction of the District Court, and so affirmed by the Circuit Court of Appeals.

Questions arise as follows, to-wit:

1. Whether the first amended bill of complaint in equity states a matter of federal jurisdiction.

2. Whether the matter involved is of federal jurisdiction.

3. Contract rights, under the State of Nevada and the United States of America, as a federal and constitutional matter.

4. Local, political and philosophical prejudicial influence and affluence of Ventura County, State of California.

5. Full faith and credit of the judgment rendered in an amended decree of divorce by the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, as provided by the Constitution and Federal Laws of the United States of America.

6. Is the denial of leave to amend a bill of complaint in equity a denial of due process of law.

7. The supremacy of equity over law, as interpreted by fundamental legal conceptions, powers of courts of equity, court of chancery, and as determined by the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

I.

The Circuit Court of Appeals Have in This Matter Decided an Important Federal Question in Conflict With the Applicable Decisions of the Supreme Court of the United States.

The holding of the Circuit Court of Appeals set forth under the caption, "The Questions Presented," subdivision 1, the question of whether the first amended bill of complaint in equity states a matter of federal jurisdiction.

Where suits to enforce laws of one state are entertained in courts of another on principles of comity, Federal District Courts sitting should entertain them if they do not infringe on federal law:

> *Milwaukee County v. M. E. White Co.*, 296 U. S. 268 (1935),

and petitioner contends that he has been deprived of his rights and privileges, and to deprive a citizen of rights and privileges in a conspiracy by persons named as respondents in above cause and when a person is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators:

> Chapter III, Civil Rights, Title 8, Sec. 47, subd. (3), Code of Laws of the United States of America; R. S., Sec. 1980;

From Act July 31, 1861, c. 33, 12 Stat. 284;
Act April 20, 1871, c. 22, Sec. 2, 17 Stat. 13,

and the first amended bill of complaint in equity alleges fraud, and courts of equity have jurisdiction in United States Courts to relieve in all cases of fraud:

Tyler v. Savage, 143 U. S. 79, 12 Sup. Ct. 340, 36 L. Ed. 82,

and the acts complained against by petitioner is an unconstitutional invasion of a property right depriving petitioner of rights granted under federal laws and the Constitution of the United States, therefore, a matter of federal jurisdiction is stated:

Truax v. Ralich, 239 U. S. 33, 36 Sup. Ct. 7, 60 L. Ed. 131.

II.

The Circuit Court of Appeals Have Decided an Important Question of Law in Conflict With the Applicable Decisions of the Supreme Court of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 2, "whether the matter involved is of federal jurisdiction.

Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any state, of any right, privilege, or immunity, secured by the Constitution of the United States, or any right secured by any law of the United States providing for equal rights of citizens of the United

States, or of all persons within the jurisdiction of the United States:

Code of laws of the United States, as follows:

U. S. C., Title 28, Sec. 41, subd. (14):

R. S. 563, par. 12; Sec. 629, par. 16;

Mar. 3, 1911, c. 231, Sec. 24, par. 14, 36 Stat. 1092,

and every person who causes to be subjected, any citizen of the United States, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress:

Code of Laws of the United States, as follows:

U. S. C., Title 8, Sec. 43;

R. S. Sec. 1979:

From Act April 20, 1871, c. 22, Sec. 1, 17 Stat. 13,

and if legislatures and courts of the several states may at will annul the judgments of the courts of the United States, supported by the Constitution of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be depreciated by all; and the people of one state not less than the citizens of every other state, must feel a deep interest in resisting principles as destructive of the United States and its Constitution, and averting consequences as fatal to themselves:

United States v. Judge Peters (Cranch. 5), U. S. Reps. 9, p. 136.

III.

The Circuit Court of Appeals Have Decided a Most Important Question of Law in Conflict With Applicable Decisions of the Supreme Court of the United States and Contrary to the Constitution of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 3, "contract rights under the state of Nevada and the United States of America, as a federal and constitutional matter."

Among the important matters involved in this matter is a contract for property settlement, made and entered into by and between the petitioner William Doster Noland, and the respondent Vyola Bubb Noland, also known as Vyola Bubb Loughman [R. 41 to 45], and the matter of contracts is one of the most important parts of the Constitution of the United States, in fact so important that the honorable gentlemen who drafted the Constitution of the United States, made the matter of contracts one of the foremost thoughts of their minds, relative to the Constitution, as under Article I, Sections 9 and 10, they repeated, "No bill of attainder or ex post facto law shall be passed," prohibiting either the United States Congress or any state from passing such legislation, and also they prohibited, as follows: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, . . .," and under the provisions of the said contract for property settlement by and between the said petitioner and respondent, among the various obligations of said contract, was the obligation of release as to certain liabilities, consisting as follows: That the petitioner was not to be held responsi-

ble in any manner for the further payment of any attorney fees, costs, court costs or otherwise, in any litigation conducted by said respondent, such matters being fully settled by the provisions of said contract, and also other matters were fully settled, as the said contract reads in part as follows:

> This Agreement made and entered into this 13th day of December, 1934, by and between William Doster Noland, First Party, and Vyola Bubb Noland, Second Party.
>
> Now, Therefore, It is Agreed:
>
> First: That, except as hereinafter specified, each party hereto is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and that each of said parties hereby releases the other from any and all liabilities, debts, or obligations of any kind or character incurred by the other from and after this date, and from any and all claims and demands, including all claims of either party upon the other for support and maintenance as wife or husband or otherwise, it being understood that this instrument is intended to settle the rights of the parties hereto in all respects, except as hereinafter provided.
>
> Seventh: First Party does hereby release any and all claims to the sum of approximately $1200.00 heretofore obtained by Second Party from the safety deposit box of the parties hereto, said sum being accepted by Second Party in full satisfaction of all claims for alimony, either temporary or permanent, costs or attorney's fees in any action for divorce or separation now pending, or in any action, or actions which either party may maintain against the other in the future, and said sum is further accepted in full

satisfaction of any and all claims of every kind, nature and description which Second Party now has, or may hereafter have against First Party, except as otherwise provided herein.

Eleventh: Each party to this agreement hereby solemnly and specifically avers that the foregoing agreement has been entered into without undue influence or fraud or coercion or misrepresentation or for any cause except as herein specified, said agreement having been executed after both parties hereto have had the advice of counsel.

Twelfth: It is agreed that the provisions of this agreement shall be incorporated in any decree of divorce which may be hereinafter obtained by either of the parties hereto.

WILLIAM D. NOLAND, First Party.

VYOLA BUBB NOLAND, Second Party.

Signatures of the parties acknowledged before a Notary Public.

The record shows, that, the respondent Vyola Bubb Noland, and she is also the second party to the foregoing contract, that the said respondent, has through and by fraud procured judgments in courts as shown in the record, disregarding the foregoing contract and its obligations on her part, and the obligations of this said contract have been impaired to the detriment and serious damage, to the extent of being irreparable injuries, losses and damages, caused to petitioner hereof, regardless of

the provisions of the Constitution of the United States of America, which provides as follows, to-wit:

> No State shall . . . pass any Bill of Attainder, ex post facto Law, *or Law impairing the Obligation of Contracts*, . . .
>
> Article I, Section 10, Constitution of the United States,

and the power to impair the obligations of contracts is denied to states, but, nevertheless, the Superior Court of the state of California, regardless of the constitutional provision impaired the obligations of the foregoing contract, detrimental and injurious to petitioner, as shown in the record [R. 52 to 55], and likewise judgment of the United States District Court below [R. 103 to 104], and likewise judgment of the Circuit Court of Appeals, Ninth Circuit [R. 129], and the contract clause aforesaid of the Constitution of the United States is a limitation on the power of the states, whatever form it may assume, if a contract right is thereby impaired:

> *Murray v. Charleston*, 96 U. S. 432, 444 (1878);
>
> *Sturges v. Crowninshield*, 4 Wheat. 122 (1819),

and the contracts which the Constitution of the United States protects are contracts and the rights of such contracts such as the aforesaid contract hereof, as made by and between the said petitioner and the said respondent, as this said contract relates to property rights:

> *Stone v. Mississippi ex rel. Harris*, 101 U. S. 814 (1880);
>
> *Douglas v. Kentucky*, 168 U. S. 488 (1897),

and if courts are to regard the Constitution of the United States as the supreme law of the land, and the Constitution is superior to any ordinary act of the Legislature, the Constitution and not such ordinary act, must govern the case to which they both apply, and when the statute rule intervenes the contract, the statute rule is inoperative:

Marbury v. Madison (1 Cranch), U. S. Reps. 5, pages 61, 68, 69, 70, 71 and 72,

and in considering a contract, the actual conditions of the contract cannot be ignored; the Court ought not, by overnice refinements or through assumptions out of harmony with patent facts, to facilitate the practical destruction of admitted legal obligations:

United States ex rel. Von Hoffman v. Quincy, 4 Wall. 535 (1867),

and the contract clause of the Constitution protects rights under the contract and not mere incidental advantages:

Ochiltree v. Iowa R. Contracting Co., 21 Wall. 249, 253 (1875),

and the obligation of a contract includes everything within its obligatory scope; among these elements nothing is more important than the means of enforcement; this is the breadth of its vital existence, and without it the contract as such ceases to be; the ideas of right and remedy are inseparable:

Edwards v. Kearzey, 96 U. S. 595, 600 (1878),

and the obligation of contract is in fact the law which binds the parties to perform their agreement:

Curran v. Arkansas, 15 How. 304 (1853),

and it is the means which, at the time of its creation:

Worthen (W. B.) Co. ex rel. Street Improv. Dis. v. Kavanaugh, 295 U. S. 56 (1935),

the law affords for its enforcement:

Walker v. Whitehead, 16 Wall. 314 (1873);

Louisiana ex rel. Nelson v. St. Martin's Parish, 111 U. S. 716, 720 (1884),

and the constitutional prohibition against impairment of contract obligations has no reference to the degree of impairment:

United States ex rel. Von Hoffman v. Quincy, 4 Wall. 535 (1867),

and the extent of the impairment is not material:

Green v. Biddle, 8 Wheat. 1 (1823);

Farrington v. Tennessee, 95 U. S. 683 (1878),

and it is not a question of degree; the obligation must not be diminished at all:

Planters' Bank v. Sharp, 6 How. 301 (1843).

IV.

The Circuit Court of Appeals Have Decided an Important Question of Law in Conflict With Applicable Decisions of the Supreme Court of the United States and Contrary to the Constitution and Federal Laws of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 4, "Local political and philosophical prejudicial influence and affluence, of Ventura County, State of California."

The record shows that local political and philosophical prejudicial influence and affluence of Ventura County, State of California, have played an important part in the matters involved in this cause [R. 30, par. XXI½], wherein petitioner was arrested outside the city of Ventura on the highway, while on his way to attend a hearing of the matter involved herein, before the Superior Court of the State of California in and for the county of Ventura, and after being arrested on the highway on a trumped up charge of speeding, your petitioner was brought before Judge Loughman, a Justice of the Peace in the city of Ventura, California, and husband of the respondent Vyola Bubb Noland, divorced wife of your petitioner, and the said Judge Loughman presiding as the Court during the hearing, viciously in a most vitrolic manner attacked your petitioner for supposedly disturbing his home with the said respondent Vyola Bubb Noland through and by the litigation being conducted in the matters involved in the cause hereof, and after said vicious

and vitrolic attack the said Judge Loughman imposed threats and a fine upon your petitioner, which in itself as a procedure, takes on an aspect that the political organization in said instance, conduct and administrate justice in a totalitarian or soviet formation of their own liking, against your petitioner, instead of as provided under the Constitution of the United States, and upon the said respondent Vyola Bubb Noland, preparing for her marriage to the said Judge Loughman, she sent to your petitioner and asked your petitioner to give her an affidavit, setting forth that your petitioner had not been baptized in any church, which your petitioner refused because your petitioner had been baptized, the said respondent representing that it was necessary to have such affidavit for the purpose to marry the said Judge Loughman in the Catholic Church as the said Judge was a Catholic, and your petitioner not being a Catholic Church member, but instead of such your petitioner is a Protestant, therefore, the said respondent married the said Judge Loughman without said affidavit, representing that she could thereby become a member of the Catholic Church; and thereby use the influence and affluence of said church against your petitioner in her litigation against petitioner hereof, which was thoroughly demonstrated in the hearing held before the said Judge Loughman as set forth in the record hereof at page 30, paragraph XXI½, and also set forth in the record hereof, at page 29, paragraph XXI¼, and at page 30, paragraph XXII, and is further set forth in the record in the affidavit of William Doster Noland, petitioner hereof, at pages 39 and 40 of said record, par-

ticularly in paragraphs 4 and 5 of said affidavit on page 40 of record hereof, and is further demonstrated [R. 52 to 55], all of which shows without any question of doubt, that the local political and philosophical prejudicial influence and affluence of the Catholic Church in Ventura County, State of California, have been used by the said respondent to the extent that your petitioner could not under any color of justice or law receive either justice or provisions of the law as provided by the Constitution of the United States of America, in the said County of Ventura, State of California, and the said local prejudice of Ventura County, State of California as used against your petitioner is further supported by affidavits of William Doster Noland, petitioner hereof [R. 56 to 68], and the said affidavits filed in the District Court below fully establish that the local political and philosophical prejudicial influence and affluence set forth the fact that your petitioner had reason to believe and did believe that, from the prejudice of said influence and affluence, he was unable to obtain justice in any Court of Ventura County, State of California.

The foregoing record, establishes beyond any doubt that the local prejudice was outstanding against your petitioner in Ventura County, State of California, coupled to the conspiracy and fraud as alleged in the first amended bill of complaint in equity, is a deprivation of citizenship rights and privileges, and to deprive a citizen of rights or privileges in a conspiracy of two or more persons, and also depriving a citizen of having exercised any right or privilege of a citizen of the United States, the party so

injured or deprived may have an action for the recovery of damages, against one or more of the conspirators, and said action may be prosecuted in the United States Courts:

Chapter 3, Civil Rights, Title 8, Section 47, Subd. (3); R. S. Section 1980;

From Act July 31, 1861, c. 33, 12 Stat. 284;

Act April 20, 1871, c. 22, Sec. 2, 17 Stat. 13,

and in the foregoing procedure such as the record shows and as set forth under this paragraph IV hereof, is a deprivation and denial of rights, privileges, personal liberty, property and property rights, as the conspirators named as respondents herein, placed themselves in the position of being the majority, and placed your petitioner in the position of being in the minority, is very similar to a matter wherein the majority, under the provisions of the Bituminous Coal Conservation Act of 1935 (49 Stat. 991), which authorized a specified majority of producers and miners to fix maximum hours, and minimum wages within the several districts, compulsory upon the minority by virtue of the tax rebate (13½ per cent of the 15 per cent tax on coal at the mine) to members of the coal code, and denial of Government purchases, was held to be unconstitutional interference with personal liberty and private property:

Carter v. Carter Coal Co., 298 U. S. 238, 311 (1936),

and the aforesaid local prejudice have deprived and denied your petitioner his contract rights under aforesaid contract by and between petitioner and respondent Vyola

Bubb Noland, and valid contracts are property, whether the obligor be a private individual or otherwise and rights of contracts are protected by the Constitution of the United States:

Lynch v. United States, 292 U. S. 571, 579 (1934):

Fifth Amendment, Constitution of United States,

and the aforesaid local prejudice which has been exercised against your petitioner in Ventura County, State of California, is a denial of due process of law, and the general scope of the Fifth Amendment of the Constitution is frequently measured by the settled scope of the Fourteenth Amendment as against the States, and the Court has proceeded on the assumption "that the legal import of the phrase 'due process of law' is the same in both amendments":

French v. Barber Asphalt Paving Co., 181 U. S. 324, 329 (1901),

and "if any different meaning of the same words as they are used in the Fourteenth Amendment (and in the Fifth Amendment) can be conceived, none has as yet appeared in a judicial decision":

14th Amendment, Constitution of United States;

Twining v. New Jersay, 211 U. S. 312, 326 (1932),

and the provision of the 14th Amendment of the Constitution of the United States for the protection of your petitioner, in his rights of liberty, property and property rights, and due process of law, it is old as a principle of civilized government, and it is found in the Magna Charta; it is a guaranty against any encroachment upon an acknowledged right of citizenship:

Munn v. Illinois, 94 U. S. 113, 123-124 (1877),

and the protection of the Fourteenth Amendment of the Constitution is for the benefit of those who are injured through the invasion of personal or property rights:

> *Tyler v. Judges of the Court of Registration*, 179 U. S. 405, 410 (1900),

and it must be observed that the prohibitions of the Fourteenth Amendment of the Constitution refer to all the instrumentalities of the state, to its legislative, executive, and judicial authorities, and, therefore, whoever by virtue of public position under a state government deprives another of any right protected by said amendment, violates the constitutional inhibition, and the constitutional prohibition has no meaning, if an agent of a state has power to annul or evade it:

> *Ex parte Virginia*, 100 U. S. 339, 346-347 (1880);
>
> *Gibson v. Mississippi*, 162 U. S. 565 (1896),

and these principles have been enforced, in which it was held that the prohibitions of the Fourteenth Amendment of the Constitution extended to all acts of the state, whether through its legislative, its executive, or its judicial authorities:

> *Scott v. McNeal*, 154 U. S. 34 (1894),

and when the suit is one arising under the laws of the United States, and, under the acts of Congress, the Supreme Court of the United States may review the decision of the state court on the federal question raised:

> *St. Louis, I. M. & S. R. Co. v. Taylor*, 210 U. S. 281 (1908).

V.

The Circuit Court of Appeals Have Decided an Important Question of Law in Conflict With Applicable Decisions of the Supreme Court of the United States and Contrary to Provisions of the Constitution of the United States.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 5, "Full faith and credit of the judgment in an amended decree of divorce by the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, as provided by the Constitution of the United States of America."

The record shows that on the 23rd day of December, 1937, that the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, made and entered an amended decree of divorce in favor of petitioner, and that the Superior Court of the State of California, in and for the County of Ventura, had proceedings and held hearings opposing and restraining the said amended decree of divorce, regardless of the fact that the Constitution of the United States provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."
>
> *Constitution of United States,* Article IV, Sec. 1.

A number of cases have held that under the full faith and credit clause a sister-state judgment cannot be impeached for fraud, but such attack must be made in the state where the judgment was rendered:

Christmas v. Russell, 5 Wall. 290 (1866);

Maxwell v. Stewart, 21 Wall. 77 (1875);

Simmons v. Saul, 138 U. S. 439,

and dicta are found in Supreme Court cases, that a judgment by a state may not be impeached for fraud as proposed in the record by respondents:

Hanley v. Donoghue, 116 U. S. 1, 4 (1885);

Wisconsin v. Pelica Ins. Co., 127 U. S. 265 (1888),

and it has been held that a judgment enforceable in the state where rendered must be given effect in another state under the full faith and credit clause:

Sistare v. Sistare, 218 U. S. 1 (1910),

and the enforcement of claims otherwise within protection of the full faith and credit clause cannot be denied by courts, when courts have general jurisdiction of the subject matter and the parties:

Broderick v. Rosner, 294 U. S. 629 (1935),

and the record shows that a temporary restraining order made ex parte without notice and without a return date was issued by the Superior Court of California, Ventura County, against the enforcement by petitioner, of the amended decree of divorce made and entered by the Eighth

Judicial District Court of the State of Nevada, in and for the County of Clark, regardless of the fact that the courts of one state have no jurisdiction to enjoin the enforcement of judgments at law obtained in another state:

Embry v. Palmer, 107 U. S. 3, 13 (1883),

and the records, judicial proceedings of one state shall be given the same effect in courts of another state as they have by the laws and usage at home:

Chicago & Alton Ry. Co. v. Wiggins Ferry Co., 119 U. S. 615, 622 (1887).

And a judgment of a state court, when the question is presented for decision in a court of another state, is entitled to as much force and effect as it has in the state in which it was rendered:

Ohio v. Chattanooga Boiler & Tank Co., 289 U. S. 439 (1933),

and no greater effect can be given than is given in the state where rendered:

Robertson v. Pickrell, 109 U. S. 608, 610 (1883),

and the extent of conclusiveness is that when duly pleaded and proved, judgments of other states have the effect of being not merely *prima facie* evidence but conclusive proof of the rights thereby adjudicated:

Everett v. Everett, 215 U. S. 203 (1909),

and a judgment cannot be impeached either in or out of the state by showing that it was based on a mistake of law:

> *American Express Co. v. Mullins,* 212 U. S. 311, 312 (1909).

And it is the duty of courts to support each and every right guaranteed by the Federal Constitution and courts are not at liberty to decide a cause contrary to the provisions of the Constitution of the United States:

> *Cooley's Constitutional Limitations,* and cases cited (p. 159, *et seq.*), and,

and,

> *Constitution of United States,* Article VI, Clause 2,

reads in part as follows:

> "This Constitution and the laws which shall be made in pursuance thereof; . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

And the Constitution of the United States is the fundamental law of the United States in opposition to which any order or law must be inoperative:

> *Cooley's Constitutional Limitations,* 4th Ed. 56 (*45).

VI.

The Circuit Court of Appeals Have Decided an Important Question in Conflict With the Decisions of the Supreme Court of the United States and in Conflict With the Weight and Authority of Equity.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 6 "Is the denial of leave to amend a bill of complaint in equity a denial of due process of law."

The record shows that the District Court below dismissed without leave to amend and affirmed by the Circuit Court of Appeals for the Ninth Circuit, and it has been held, that to deny leave to amend a bill of complaint in equity, is a denial of due process of law and is a reversible error:

Kendig v. Deane, 97 U. S. 423;

Rogers v. Penobscot Mix. Co., 154 Fed. 606,

and in the case of:

United States v. Lehigh Valley R. R. Co., 220 U. S. 287,

the United States proceeded, both by equity and mandamus, against certain railroad companies, and Mr. Chief Justice White delivered the opinion, saying:

> "Deciding as we do, that error was committed in denying leave to file proposed amended bill, the decree below is reversed and the cause remanded with directions for further proceedings in conformity with this opinion."

VII.

The Circuit Court of Appeals Have Decided An Important Question in Conflict With the Applicable Decisions of Circuit Courts of Appeals, Courts of Equity of the United States, and in Conflict With Applicable Decisions of the United States Supreme Court.

The holding of the Circuit Court of Appeals set forth under the caption "The Questions Presented," subdivision 7, "The supremacy of equity over law, as interpreted by fundamental legal conceptions, powers of courts of equity, court of chancery, and as determined by the Supreme Court of the United States."

A Court of Equity in the United States Court have jurisdiction regardless of state courts and are not bound or modified by state laws or practice:

> *Green Admix. v. Creighton,* 23 Howard 98, 108, 18 L. Ed. 419.

And United States Courts sitting in equity are not powerless by statutory provisions, but may apply their own rule:

> *Kirby v. L. S. & M. S. Ry. Co.,* 120 U. S. 130, 7 Sup. Ct. 430, 30 L. Ed. 569,

and if the judgments of the United States Courts may be annulled by the several states, the Constitution itself becomes a solemn mockery:

> *United States v. Judges,* 32 Fed. 714,

and in referring to the "Constitution of the United States," Pomeroy on the Constitution, a recognized authority, says:

At page 94:

> "is a fundamental statute of the whole people, passed by them in their organic capacity, binding upon themselves and upon all the agents which they have set up and clothed with limited functions. Beyond this statute neither congress nor president can lawfully go; going beyond their acts are nullities and not laws,"

and at page 17:

> "Every statute, every administrative act, every exercise of jurisdiction must be tested by, and conform to, this fundamental utterance of the people's sovereign will,"

and on the same page, he states:

> "is law to legislatures, to executives, and to courts, both of the nation and of the states. The Constitution of each commonwealth is, in like manner, a law to its local authorities. Every statute, every administrative act, every exercise of jurisdiction must be tested by and conform to this fundamental utterance of the people's sovereign will."

And whatever power may be granted, no power can be given to do what the laws of the United States forbid, whether they call their action administrative or judicial:

Penn. R. Co. v. Pol. Ser. Com., 250 U. S. 566,

and allegations of fraud, such as are set forth in the record, are sufficient when made on information and belief, for jurisdiction in a court of equity of the United States,

and it has been held that it is sufficient for the court to consider the matter:

Holton v. Davis (C. C. A. 9), 108 Fed. 138, 149,

and the Supreme Court have held the fact of being a party does not estop a person from relief against fraud, as it is generally parties to the action that are the victims of fraud:

Johnson v. Waters, 111 U. S. 640, 28 L. Ed. 547, 556,

and a Court of Equity has jurisdiction to protect property, even though in complying with the decree of the court to perform acts beyond the jurisdiction of the court:

Massie v. Watts, 6 Cranch 148, 157, 3 L. Ed. 181.

And in a case very similar to the matter hereof before the Court, in the case of:

Graver v. Fauret (C. C. A. 7), 76 Fed. 257,

the Court had before it a bill to enjoin a decree in equity by a state court, wherein Graver brought a suit in equity in the Superior Court of Cook County, Illinois, against Faurot, alleging fraud, and a violation of confidential relationship in the sale of $15,000.00 of stock to him. All of the evidence was in the hands of the defendants. They filed an answer denying the charge of fraud. The Court dismissed the bill upon this answer. It was afterwards discovered the answer was false (and the answer of respondents in this matter before the Court, in the District Court below is false, wherein respondent Vyola Bubb Noland supported her answer with an affidavit claiming the procedure and decree of Nevada Court had not been presented to the Superior Court of the State of California, in and for Ventura County, when the affidavits of

petitioner show that said procedure of Nevada Court had been presented to the said Superior Court of California [R. pp. 57 to 60] in an excerpt of transcript of hearing on February 7, 1938, and that the proceedings, records and judicial proceedings of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, were introduced in evidence before the said Superior Court of California [R. pp. 65 to 66, par. IV subds. 1 and 2, and Exhibit A, pp. 67 to 68], and the said affidavit of respondent Vyola Bubb Noland [R. p. 92, par. 13] reads as follows:

> "That during said hearing of March 24, 1938, William Doster Noland did not, and at all times did not, seek to introduce in evidence the contract of settlement heretofore referred to, or the Nevada decree of divorce or the Nevada modification of said decree of divorce, nor were any of said documents and records ever introduced into evidence in the Superior Court of the State of California, in and for the County of Ventura,"

and such affidavit filed in the District Court in support of motion to dismiss is a false answer very similar to the case of *Graver v. Faurot* (C. C. A. 7), 76 Fed. 257, cited hereof, whereupon this action of *Graver v. Faurot* was brought in the Federal Court to set aside the former Illinois State Court decree. The District Court below had dismissed the complaint, and the Circuit Court of Appeals in reversing it said:

> "A decree for the respondents went as a matter of course. There was practically a default on the part of plaintiff, brought about by the false answers and

affidavits. Technically the answers were evidence at the hearing but before the hearing they served the distinct purpose of denying to the plaintiff information which the respondents were under duty to furnish, and so of depriving him, before the test of trial, of his standing in court. That was an extrinsic, collateral fraud, distinct from and antecedent to the use of answers as evidence at the hearing":

Grazer v. Faurot (C. C. A. 7), 76 Fed. 257, 262,

and the Court after stating the apparent conflict between the parties in the cases as follows:

Marshall v. Holmes, 141 U. S. 589, 35 L. Ed. 870; and

United States v. Throckmorton, 98 U. S. 61, 25 L. Ed. 93,

the Court said:

"If there is here any inconsistency with the opinion in United States v. Throckmorton, to which reference was made, it was not the result of oversight, and ought perhaps to be regarded as an intentional modification of the earlier utterance. But whether there is conflict between the two opinions, or how they are to be reconciled, we need not consider. The present case, if we have properly interpreted the facts alleged, is distinguished from both, and rests upon an equity of which there can be no just denial. In reason and good conscience a decree obtained as this is alleged to have been, ought to be annulled. There can be no consideration of public policy or of private right on which it ought to stand. There can be and ought to be no repose of society where for such wrongs the courts are incapable of giving redress.

The decree of the Circuit Court is reversed and the cause remanded with direction to overrule the motion to dismiss the bill."

Graver v. Faurot (C. C. A. 7), 76 Fed. 257, 263,

and the supremacy of equity over law, is for the purpose of leveling of the inequalities of the law in a conflict between parties, as in many instances, sometimes the law favors one party more so than the other, and in such case, justice may be found only in equity, and not in law, therefore, in case of conflict as distinguished from concurrence, a jural relation is substantively determined by the equitable rule rather than the legal. Since, in any sovereign state, there must, in the last analysis, be but a single system of genuine law, since the various principles and rules of that system must be consistent with one another, and since, accordingly, all genuine jural relations must be consistent with one another, two conflicting rules, the one "legal" and the other "equitable" cannot be valid at the same moment of time; one must be valid and determinative to the exclusion of the other. As a mere practical matter, the equitable rule would ordinarily prove triumphant because of the superior coercive procedure and remedies of the Court of Chancery:

Bennet v. Butterworth, 11 How. (U. S.) 669, 13 L. Ed. 859;

The Relations Between Equity and Law (1913), 11 Michigan Law Review, 537, 553, 555, 557, reprinted in (1923) Fundamental Legal Conceptions, 131, 133, 136, Prof. Wesley N. Hohfeld; and see,

Cook, Powers of Courts of Equity, 15 Columbia Law Review, 235-238 (1915).

Conclusion.

Several questions of great importance are presented, but the most outstanding question is a contract relative to property and property rights, and full faith and credit of a foreign judgment made and entered in the District Court of the State of Nevada, and the fraud as set forth in the record, which the Circuit Court of Appeals have decided in conflict with the decisions of other Circuit Courts of Appeals, Courts of Equity, the Supreme Court of the United States, federal laws, and the Constitution of the United States, which is clearly set forth in the record and petition for writ of certiorari herewith, and your petitioner respectfully submits the record on appeal before this Honorable Court, including the proceedings had before the Circuit Court of Appeals for the Ninth Circuit.

Your petitioner respectfully submits the record and all papers and pleadings on file herewith. This appeal is not taken for the purpose of delay, but in the hope that your petitioner will be able to obtain relief against the injustice of the matters as set forth in the record to which your petitioner has been subjected to in this matter.

Petitioner respectfully prays that the writ of certiorari shall be ordered to issue.

Respectfully submitted,

CALVIN S. MAUK,
Solicitor for Petitioner.

CALVIN S. MAUK,
Of Counsel.

Certificate of Verification.

State of California, County of Los Angeles—ss.

William Doster Noland, being first duly sworn, deposes and says: That he is the petitioner in the above and foregoing action; that he has read the foregoing and within petition and that the allegations therein and thereof are true as he verily believes and that the same is not interposed for delay.

WILLIAM DOSTER NOLAND,
Petitioner.

Subscribed and sworn to before me this 3rd day of July, 1940.

(Seal) EDNA M. TILTON,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires on July 20, 1940.

IN THE

Supreme Court of the United States

October Term, 1939

No.....

WILLIAM DOSTER NOLAND,

Petitioner,

vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

BRIEF IN SUPPORT OF PETITION.

I.

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals is printed in the record at pages 122 to 128, inclusive, and for brevity is not repeated here.

Jurisdiction.

The judgment of the Circuit Court of Appeals was rendered on April 26, 1940 [R. 129].

The Supreme Court of the United States have jurisdiction under Title 28, Judicial Code and Judiciary, Section 347, subd. (a), (Section 240, Judicial Code, amended), Code of Laws of the United States of America, 1934 Edition.

Statement.

A complete statement of the matter and procedure appears in the petition hereof, in which several federal questions are involved; more particularly the questions of full faith and credit, and contract rights as provided under the Constitution of the United States, and also fraud as shown in the record, and for brevity the statement is not repeated here.

Specifications of Error.

I.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below entered September 23, 1939, denying leave to amend.

II.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, affirming the judgment of the District Court below entered September 23, 1939, by affirming

with costs in favor of the appellees and against the appellant, when the judgment of the District Court below reads, "No costs allowed under Rule 54D."

III.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below, entered September 23, 1939; impairing the obligations of contract made and entered into by petitioner and respondent Vyola Bubb Noland, as shown in the record hereof.

IV.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below made and entered September 23, 1939, in denying the full faith and credit provision of the Constitution of the United States.

V.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below made and entered September 23, 1939, by rendering a law decree in a proceeding in equity.

ARGUMENT.

I.

Rights and Obligations of Contract Impaired Against Petitioner.

The petitioner William Doster Noland and respondent Vyola Bubb Noland, also known as Vyola Bubb Loughman, made and entered into a contract, for property settlement, on the 13th day of December, 1934, at Las Vegas, Nevada, two days prior to a Nevada decree of divorce, by which the property and property rights existing between the said parties were fully settled for all time to come, as shown in the record, and regardless of this contract, and disregarding same, the said respondent, Vyola Bubb Noland, filed a complaint in the Superior Court of the State of California, in and for Ventura County, seeking judgments on her property and property rights in violation of her obligations of the said contract, and fraudulently procured judgment for $1000.00 as attorney's fees and $50.00 as court costs, when the said contract for property settlement between the said parties hereof, prohibited said respondent from conducting any such procedure and obtaining such judgments, and impairing the said contract, and the District Court below sustained the said impairing of the obligations of said contract, and the Circuit Court of Appeals affirmed the impairing of the obligations of said contract as sustained by the said District Court below, all of which procedure has violated and impaired the obligations of said contract unlawfully against your petitioner hereof, and the Constitution of the United states provides:

> "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, . . ."
>
> *Constitution of United States,* Article I, Sec. 10.

And the aforesaid contract between the petitioner and aforesaid respondent, is a contract which relates to property and property rights, of the parties, and the contracts which the Constitution of the United States protects are those which relate to property and property rights:

Douglas v. Kentucky, 168 U. S. 488 (1897),

and in the impairment of contract obligations, it is not a question of degree; the obligation must not be impaired or diminished at all:

Planters' Bank v. Sharp, 6 How. 301 (1848),

and in the rulings and decisions of all the courts which have had this matter before them, namely, the State Courts of California, the District Court of the United States and the Circuit Court of Appeals of the United States, it is set forth in the record, that the state's laws and rulings have been upheld, and thereby we have the impairment of the obligations of the aforesaid contract between the petitioner and aforesaid respondent Vyola Bubb Noland, and when the jurisdiction of the United States Supreme Court is invoked because of the asserted impairment of contract rights arising from the effect of said state laws and rulings, it is the duty of the Court to exercise independent judgment as to the nature and scope of the contract:

Board of Liquidation v. Louisiana, 179 U. S. 622 (1901).

The Supreme Court can examine the alleged contract to determine the obligations which inhere in it:

Schenebeck v. McCrary et al., 298 U. S. 36 (1936),

and the Supreme Court will determine for itself the meaning and effect of the contract:

Violet Trapping Co. v. Grace, 297 U. S. 119 (1936),

and whether the obligation has been impaired:

Ingraham v. Hanson, 297 U. S. 378 (1936).

II.

The Rights of Full Faith and Credit as Provided by the Constitution of the United States Are Denied to Petitioner.

The respondent Vyola Bubb Noland procured a decree of divorce from the Eighth Judicial District Court of the State of Nevada, in the County of Clark, and the foregoing contract conditions were provided in said decree, but the said respondent refused to comply with the said Nevada decree of her own making and liking; the petitioner then applied to the Superior Court of the State of California, in and for the County of Ventura, to compel said respondent to comply with said Nevada decree, and the said California Court entirely disregarded the aforesaid contract between petitioner and respondent, and judgment of the said Nevada Court, and thereupon your petitioner applied to the said Nevada Court for an amended decree of divorce, which was granted by the said Nevada Court, as shown in the record, and again the said amended decree of Nevada Court was enjoined by the said Superior Court of California; the said Nevada Court making and entering the amended decree on December 23, 1937, and the said Superior Court of California, on December 27, 1937, made and entered a temporary restraining order without notice and without any return date and served same, and said order is still in effect and has been at all times, preventing the enforcing of the said amended decree of divorce rendered by the said Nevada Court, and thereby in the California State Courts, District Court of the United States, and the Circuit Court of Appeals

of the United States, Ninth Circuit, your petitioner has been and is now denied his contract rights and the full faith and credit of the amended decree of divorce as rendered by the said District Court of the State of Nevada, disregarding the fact that the Constitution of the United States provides as follows:

> "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."
>
> *Constitution of United States*, Article IV, Sec. 1.

By the act of March 27, 1804 (2 Stat. 298), Congress extended the rights under this clause to the public acts, records, judicial proceedings, etc., of the Territories of the United States and countries subject to the jurisdiction thereof:

> *Atchison, T. & S. F. R. Co. v. Sowers*, 213 U. S. 55 (1909).

And the Courts of the United States are bound to give to the judgments of the state Courts the same faith and credit that the Courts of one state are bound to give to the judgments of the Courts of her sister states:

> *American Surety Co. v. Baldwin*, 287 U. S. 156 (1932),

and the United States Supreme Court has held; under the full faith and credit clause it declares the attributes and qualities which judicial proceedings and records of one

state shall have when offered in evidence in the Courts of another, and it implies that they shall be given the same effect in the Courts of another state as they have by the laws and usage at home:

Chicago & A. R. Co. v. Wiggins Ferry Co., 119 U. S. 615, 622 (1887),

and no greater effect can be given than is given in the state where rendered:

Robertson v. Pickrell, 109 U. S. 608, 610 (1883),

and the extent of conclusiveness is that when duly pleaded and proved, judgments of other states have the effect of being not merely *prima facie* evidence but conclusive proof of the rights thereby adjudicated:

Everett v. Everett, 215 U. S. 203 (1909),

and whoever by virtue of public position under a state government deprives another of rights granted under the Constitution, violates the constitutional inhibition:

Georgia Power Co. v. Decatur, 281 U. S. 505, 508 (1930);

Constitution of United States, Article XIV, Sec. 1.

And the prohibitions of the Fourteenth Amendment of the Constitution of the United States provides that whoever by virtue of a public position deprives another of property, life, or liberty, without due process of law, or denies or takes away equal protection of the laws, violates the constitutional inhibition; and as he acts in the name of the state, and for the state, and is clothed with state's power, his act is that of the state:

Missouri v. Dockery, 191 U. S. 165.

III.

Petitioner Is Denied the Rights of a Ruling in Equity In An Equity Procedure.

The record shows that the petitioner proceeded in an equity proceeding in a court of equity, in the United States Courts, and that the decree was based upon law decrees of states, regardless of the fact that the jurisdiction and procedure in equity cases in United States Courts is uniform throughout the whole country regardless of where the Court of Equity may be sitting:

> *Venner v. Great Northern R. Co.*, 153 Fed. 408 (affirmed 209 U. S. 24, 28 Sup. Ct. 328, 52 L. Ed. 666,

and a Court of Equity of the United States Courts is entirely independent of and cannot be affected by state legislation abolishing the distinction between actions at law and suits in equity:

> *Hollins v. Brierfield Coal, etc. Co.*, 150 U. S. 371, 14 Sup. Ct. 127, 37 L. Ed. 1113,

and the jurisdiction of Federal Courts in Equity cannot be defeated or impaired by state statutes undertaking to give exclusive jurisdiction to state Courts:

> *Hayes v. Pratt*, 147 U. S. 557,

and Courts of Equity may apply their own rule in all equity cases:

> *Kirby v. L. S. & M. S. Ry. Co.*, 120 U. S. 130, 7 Sup. Ct. 430, 30 L. Ed. 569,

and a Court of Equity concerns itself only in the protection of property rights and treats any civil right of a pecuniary nature as a property right:

In re Sawyer, 124 U. S. 200, 210, 8 Sup. Ct. 482, 31 L. Ed. 402,

and the equity jurisdiction of federal Courts is independent of that conferred upon state Courts, and is not subject to the rulings of state Courts and state legislatures:

Kendall v. Creighton, 23 Howard (U. S.) 90, 106, 16 L. Ed. 419;

Borer v. Chapman, 119 U. S. 587, 7 Sup. Ct. 342, 30 L. Ed. 532,

and federal Courts of Equity are not subject to interference by state Courts, or state legislation:

McCulloch v. Maryland, 4 Wheat. (U. S.) 316, 405, 424 U. S. Rep. 17.

IV.

Petitioner Is Denied Leave to Amend and Due Process of Law.

The record shows in the decree of the District Court below and the Circuit Court of Appeals, that your petitioner was denied leave to amend and denied thereby due process of law.

As it has been held that it is reversible error to dismiss a bill in equity without leave to amend; and is a denial of due process:

> *Rogers v. Penobscot Mix. Co.*, 154 Fed. 606, 83 C. C. A. 380;
>
> *Kendig v. Deane*, 97 U. S. 423,

and in a proceeding in equity, in the case of

> *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 287,

the United States proceeded, both by equity and mandamus, against certain railroad companies, and Mr. Chief Justice White delivered the opinion, saying:

> "Deciding as we do, that error was committed in denying leave to file proposed amended bill, the decree below is reversed and the cause remanded with directions for further proceedings in conformity with this opinion."

V.

Petitioner Is Subjected and Decreed to Pay Costs Unlawfully.

The Circuit Court of Appeals erred, and decreed, by affirming costs against your petitioner in the District Court below, when the said District Court ruled "No costs allowed under *Rule 54D,*" and the Supreme Court may notice errors on appeal, though no assignment of errors filed:

Benjamin v. Buell, 268 Fed. 792,

and no administrative or judicial action may do what the laws of the United States forbid:

Penn. R. Co. v. Pol. Ser. Com., 250 U. S. 566,

and since the judgment originally obtained in the State of California was obtained fraudulently upon false testimony and likewise in the District Court below, and affirmed by the Circuit Court of Appeals, it is well established that such fraud is sufficient to undermine such judgments, and such judgments have been enjoined and set aside in the Federal Courts:

Chicago, Rock Island & Pacific Ry. Co. v. Calicotte (C. C. A. 8), 267 Fed. 799, 16 A. L. R. 386.

VI.

Petitioner Is Entitled to Justice in Equity.

Petitioner for the purpose of obtaining relief against fraud must resort to a court of equity:

Burnes v. Scott, 117 U. S. 582, 6 Sup. Ct. 865, 29 L. Ed. 991,

and it is the privilege and duty of a court of equity to furnish the remedy:

Morgan v. Beloit, 7 Wall. 614,

and whenever the property of a party has been wrongfully misapplied, it is a ground upon which a court of equity will act:

Nat. Bank v. Insurance Co., 104 U. S. 54,

and equity will apply the maxim in order to defeat what would otherwise operate as fraud:

Williamson v. Krohn, 66 Fed. 655, 13 C. C. A. 668,

and by application of the maxim, no matter what formal and proper proceedings surround a fraud, equity will disregard them all, if necessary, in order that justice may prevail:

Wagg v. Herbert, 215 U. S. 546, 30 Sup. Ct. 218, 54 L. Ed. 321,

and courts of equity will not only interfere in cases of fraud to set aside acts done, but they will also, if acts have

by fraud been prevented from being done by the parties, interfere and treat the case exactly as if the acts had been done:

Moore v. Crawford, 130 U. S. 122, 128, 9 Sup. Ct. 447, 32 L. Ed. 878, 880;

1 *Story Eq. Jur.,* Sec. 187,

and courts of equity have jurisdiction to relieve in all cases of fraud:

Whitcomb v. Schultz, 223 Fed. 268, 138 C. C. A. 510,

and a court of equity will grant relief in equity upon the ground of fraud:

Folsom v. Ballard, 70 Fed. 12, 16 C. C. A. 593.

Conclusion.

For the foregoing reasons as set forth in the record, petition and supporting brief, it is respectfully submitted that the writ of certiorari should issue in the above entitled matter as prayed.

Respectfully submitted,

CALVIN S. MAUK,
Solicitor for Petitioner.

CALVIN S. MAUK,
Of Counsel.

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IN THE

Supreme Court of the United States

October Term, 1940
No. 226.

WILLIAM DOSTER NOLAND,

Petitioner,

vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

Reply Brief of Petitioner to Answer to Petition for Writ of Certiorari by Respondents.

CALVIN S. MAUK,
Suite 305-306 Continental Bldg.,
408 South Spring Street, Los Angeles, Cal.,
Solicitor for Petitioner.

CALVIN S. MAUK,
Of Counsel.

Parker & Baird Company, Law Printers, Los Angeles.

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Respondents.

Reply Brief of Petitioner to Answer to Petition for Writ of Certiorari by Respondents.

On December 23, 1937, petitioner after having formerly made an application for an amended decree of divorce to Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, which was granted [R. 48-51], counsel for respondent Vyola Bubb Noland notified her of such application being filed and served in accordance with the laws of the State of Nevada, and she instructed her counsel to default said application [R. 59], and said respondent on December 27, 1937, had a temporary restraining order issued without a return date and without notice, four days only after decree of said amended divorce decree, and said temporary restraining order is now effective and has been at all times since issued [R. 21-24], all of which is evident that said respondent was well aware of the fact that application was made for amended decree

of divorce, and coupled to said conditions, the Supreme Court of the United States have held in a number of cases that under the full faith and credit clause of the Constitution, a sister-state judgment cannot be impeached, but that such attack must be made in the state where the judgment was rendered:

Christmas v. Russell, 5 Wall. 290 (1866);
Maxwell v. Stewart, 21 Wall. 77 (1875);
Simmons v. Saul, 138 U. S. 439 (1891).

On page 3, paragraph 7, of respondent' answer to petition for writ of certiorari, it sets forth, as follows:

> "7. On April 14, 1938 (after hearing on March 24, 1938), the Superior Court of the State of California, in and for the County of Ventura, rendered judgment denying the prayer of the petitioner, increasing the amount to be paid for the support of the child *and allowing costs and attorney's fees to respondent, Mrs. Loughman.* [Rec. 10-12; 91, par. 11.]"

Petitioner hereof has made no reference to contract feature relative to the support of the minor child, William Doster Noland, Jr., but does, however, refer to the said respondent (Mrs. Loughman) Vyola Bubb Noland applying to the said California court for attorney's fees and costs, when she had signed and executed a contract on the sixth (6th) day of December, 1934, and sworn to before a Notary Public on the 13th day of December, 1934 [R. 41-45] and (Pet. for Writ, 11-12), wherein the Seventh paragraph of said contract reads as follows:

> "Seventh: First Party (meaning petitioner hereof) does hereby release any and all claims to the sum of approximately $1200.00 heretofore obtained

> by Second Party (meaning respondent Vyola Bubb Noland, now Mrs. Loughman) from the safety box of the parties hereto, *said sum being accepted by Second Party in full satisfaction of all claims for alimony, either temporary or permanent, costs or attorney's fees in any action for divorce or separation now pending, or in any action, or actions which either party may maintain against the other in the future*, and said sum is further accepted in full satisfaction of any and all claims of every kind, nature and description which Second Party now has or may hereafter have against First Party, except as otherwise provided herein."

Under the contract clause of the Constitution of the United States:

> *Const. U. S. A.*, Article I, Section 10,

said clause of the Constitution prohibits the impairment of obligations of contracts, and the impairment of contracts may not be accomplished by judicial decisions or by legislative enactments:

> *Pine Grove v. Talcott*, 19 Wall. 666;
> *Union Bank v. Geary*, 5 Pet. 99,

and the degree of impairment is immaterial, as in

> *Farrington v. Tennessee*, 95 U. S. 683,

the court said that—

> "the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of the court to redress the wrong."

And on page 4, under title of Argument, answer to petition for writ, respondents cite the case of *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 44 Sup. Ct. 149, which

is not in point to the case hereof before the court, because the record shows that respondent Vyola Bubb Noland testified falsely in an affidavit [R. 86-93] and particularly in the record [R. p. 92, par. 13], wherein she stated that petitioner did not introduce in evidence of the aforesaid contract and proceedings of the aforesaid Nevada court in the aforesaid California court, when the record shows an entirely different condition, which is that petitioner hereof, as the record shows [R. 57-60; R. par. IV, subds. 1, 2, pp. 65-68], did introduce the said contract and Nevada proceedings before said California court, and in a leading case of an identical legal status such as we have here before the court in this case, the parties were enjoined from taking advantage of their successful judgment in a state court wherein the successful party had testified falsely as has been done by the respondent Vyola Bubb Noland in the record hereof in her affidavit in support of motion to dismiss in the District Court below, which is sufficient to undermine the judgment:

> *Chicago, Rock Island & Pacific Railway v. Callicotte* (C. C. A. 8), 267 Fed. 799, 16 A. L. R. 386,

and on page 8 of answer to petition for writ, respondent cites cases of *Van Weel v. Winston*, 115 U. S. 228, and *Fogg v. Blair*, 139 U. S. 127, which both cases are not applicable to the matter hereof, because the record shows a contractual provision made by contract in the State of Nevada, which has been fraudulently violated by respondent Vyola Bubb Noland, and constitutes a fraud and a breach of trust, which a court of chancery can give relief and has jurisdiction to give relief, and courts of equity have jurisdiction to relieve in all cases of fraud:

> *Tyler v. Savage*, 143 U. S. 79 (12 Sup. Ct. 340), 36 L. ed. 82,

and allegations of fraud have been held sufficient for hearing before the District Court:

Holton v. Davis (C. C. A. 9), 108 Fed. 138, 149,

and in the case of

Graver v. Faurot (C. C. A. 7), 76 Fed. 257,

an action was brought in the Federal District Court to set aside a former Illinois State Court decree; the District Court below had dismissed the complaint, and the Circuit Court of Appeals reversed it, saying:

> "The decree of the Circuit Court is reversed and the cause remanded with direction to overrule the motion to dismiss the bill,"

and cited cases of

Marshall v. Holmes, 141 U. S. 589, 35 L. ed. 870;
U. S. v. Throckmorton, 98 U. S. 61, 25 L. ed. 93.

The record from the District Court, Circuit Court of Appeals and petition shows local prejudice, discriminating affluence and influence against petitioner hereof, and the bill also provides for amendment to bring in other fictitious named parties which have been denied petitioner.

Conclusion.

Wherefore, for the foregoing reasons as set forth herein, in the record, petition and supporting brief, it is respectfully urged and submitted that the writ of certiorari be issued in the above entitled matter as prayed.

Respectfully submitted,

CALVIN S. MAUK,
Solicitor for Petitioner.

CALVIN S. MAUK,
Of Counsel.

IN THE

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JUL 25
CHARLES ELMORE

OCTOBER TERM, 1940.

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WILLIAM DOSTER NOLAND,

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Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

CHAS. F. BLACKSTOCK,
WM. A. REPPY,
219 West Fifth Street, Oxnard, Calif.,
Attorneys for Respondent.

Parker & Baird Company, Law Printers, Los Angeles.

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Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

BRIEF RESTATEMENT OF FACTS AND PREVIOUS PROCEDURE.

A very succinct and uninvolved restatement of the facts and procedures in this cause will be sufficient to enable the court to pass upon the petition for writ of certiorari.

1. On December 15, 1934, respondent, Mrs. Loughman (Vyola Bubb Noland), secured a divorce from petitioner in Nevada. In the decree she was granted custody of the then two-year-old child. Petitioner was ordered to pay monthly support for the child. [Rec. 45-46; 87.]

2. Immediately thereafter, respondent, Mrs. Loughman, with the child, took up residence in California and has since resided there continuously. Petitioner has at all times relevant to this case resided in California. [Rec. 5 and 6; 87 and 88, par. 3.]

3. On October 3, 1935, petitioner submitted to the jurisdiction of the Superior Court of the State of California, in and for the County of Ventura, asked for modification of the Nevada decree. Respondent, Mrs. Loughman, answered and asked for increased support for the child by way of affirmative relief, setting forth matters subsequent to the Nevada decree. [Rec. 6-7; 88, par. 4.]

4. On December 23, 1937, petitioner, while his case before the Superior Court of the State of California was still pending, went to Nevada and secured an amended decree giving him complete custody of the child. Neither the child nor the respondent, Mrs. Loughman, was present, and she authorized no one to appear for her. [Rec. 8-9; 48; 89, par, 8.]

5. Petitioner returned to California. The Superior Court of the State of California then issued an order restraining petitioner from taking custody of the child pending a decision of the case instituted by him. [Rec. 21, *et seq.*]

6. Petitioner sought a writ of prohibition from the District Court of Appeals of the State of California prohibiting the Superior Court from continuing with his case on the ground that the Superior Court had no jurisdiction.

On March 23, 1938, an alternative writ was issued, which, however, did not restrain the court from proceeding with the pending case.

On June 3, 1938, the alternative writ was dscharged and petitioner's motion was denied. [Rec. 21, *et seq.*; 123-124.]

Noland v. Superior Court, 26 Cal. App. (2d) 708; 80 Pac. (2d) 76.

(Petition for rehearing denied; application to have cause heard by Supreme Court of the State of California denied.)

Petitioner made no attempt to secure a review by the Supreme Court of the United States.

7. On April 14, 1938 (after hearing on March 24, 1938), the Superior Court of the State of California, in and for the County of Ventura, rendered judgment denying the prayer of the petitioner, increasing the amount to be paid for the support of the child and allowing costs and attorney's fees to respondent, Mrs. Loughman. [Rec. 10-12; 91, par. 11.]

8. Petitioner made a motion to vacate this judgment which was denied. Petitioner *did not take an appeal* from this judgment of the Superior Court to the higher courts of the State of California. The time for such an appeal, of course, has long since expired. [Rec. 92, pars. 14 and 13.]

9. Accrued, unpaid installments for support were assigned by respondent, Mrs. Loughman, to respondent, Mr. Farrar, for collection. Certain proceedings were had with the end in view of enforcing judgment. [Rec. 93, par. 16.]

10. With these facts as a background, the petitioner filed his "Civil Bill of Complaint in Equity" in the District Court of the United States for the Southern District of California, Central Division. This bill was dismissed by the District Court without leave to amend, on the ground that the District Court had no jurisdiction. This decision was affirmed by the United States Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT.

I.

Petitioner's Bill in Equity An Attempt to Have District Court of the United States Exercise Appellate Powers.

Petitioner's chief purpose in his bill in equity was an attempt to have the District Court of the United States review the decision of the Superior Court of the State of California which increased the child's support allowance and the decision of the District Court of Appeals of the State of California (hearing denied by the Supreme Court of the State of California) which denied a writ of prohibition directed against the Superior Court.

The District Court of the United States has no jurisdiction to exercise such a power. The Circuit Court of Appeals affirmed the District Court's decision on this ground. [Rec. 122, *et seq.*] Judge Stephens' citations are conclusive on this point.

> *Rooker v. Fidelity Trust Co.*, 263 U. S. 413; 44 Sup. Ct. 149. [Quoted by Judge Stephens, Rec. 125.]

The petition for writ of certiorari and brief in support thereof have ignored this procedural bar to the action in the District Court. Although it is felt that this point is conclusive, nevertheless brief consideration will be given to petitioner's claims, as far as they can be ascertained.

II.

Petitioner's Claims of Jurisdiction in the District Court of the United States Unfounded.

1. Obligation of Contract Not Involved in the Case.

In his petition and brief, petitioner mentions a contract. (Pet. 38-39.) This contract was one between petitioner and respondent, Mrs. Loughman, in which they agreed upon the amount of money to be paid for the support of the child. The contract was referred to by, but not incorporated in, the Nevada decree. No court is bound by such a contract when considering the welfare of a child.

> *Adams v. Adams,* 2 Cal. App. (2d) 173, 37 Pac. (2d) 729.

The constitutional prohibition is directed against the state legislature and not against the judiciary.

> *McCoy v. Union El. R. Co.,* 247 U. S. 354, 38 Sup. Ct. 504.

2. Petitioner's Claim of Violation of the "Full Faith and Credit" Clause of the Constitution of the United States Is Unfounded.

Petitioner claims that the decision of the Superior Court of the State of California was void because it failed to give full faith and credit to the Nevada decrees. The District Court of the United States in its memorandum gave consideration to this point. Judge McCormick asserted that the forum state (California) need give no

greater credit to the decrees of the foreign state (Nevada) than does the foreign state. Since the decrees were subject to modification in the foreign state they could be so modified in the forum state. [Rec. 96-103.]

Other doctrines have been promulgated by various courts which support the actions of the Superior Court of the State of California under the facts of this case.

a) The forum state is not in any way bound by decrees of a foreign state relating to the support and maintenance of a minor child, resident of the forum state at the time of inquiry.

Seeley v. Seeley, 30 App. Dec. 191, 12 Ann. Cas. 1058; 209 U. S. 544 (Certiorari denied).

b) The forum state may, on grounds of comity, follow the decree of the foreign state where no change of circumstances concerning the welfare of the child has taken place since the rendition of the foreign decree, but the decree of the foreign state is never a bar to inquiry as to the best interests of the child, and a question may arise where, even though no changed circumstances could be found, nevertheless the welfare of the child might require the court to change the decree of the foreign state.

Anthony v. Tarpley, 45 Cal. App. 72; 187 Pac. 779;

Foster v. Foster, 8 Cal. (2d) 719, 728; 68 Pac. (2d) 719;

Titcomb v. Superior Court, 220 Cal. 34, 39; 29 Pac. (2d) 206.

c) The forum state shall give full faith and credit to the divorce decrees of a foreign state dealing with support of a minor child at the time and under the circumstances of its rendition, but such a decree has no controlling effect in the forum state as to facts and conditions arising subsequently to the date of the foreign decree. In the instant case there were changed conditions. [Rec. 102.]

Heavren v. Spicer, 265 Fed. 977;

Foster v. Foster, 8 Cal. (2d) 719; 68 Pac. (2d) 719.

d) The status of the child is the *res*, and the only court which has the power to alter this status is the court in which the minor is domiciled. The *res* follows the domicile of the child.

34 *Harvard Law Review* 50, 59;

Boens v. Bennett, 20 Cal. App. (2d) 477, 480; 67 Pac. (2d) 715;

State v. Larson, 252 N. W. 329 (Minn., 1934).

3. No Conspiracy to Deny Petitioner Equal Protection of the Laws or Immunities of a United States Citizen.

Apparently another claim of petitioner is that the District Court of the United States had jurisdiction on the ground that his bill in equity alleged a conspiracy upon the part of respondents to deprive petitioner of his "rights and privileges as a citizen of the United States" and to deprive him of the equal protection of the laws. (Pet. 7-8, citing U. S. C.)

The allegations in petitioner's bill were conclusions of law which could not have been and were not supported by ultimate or evidentiary facts. The remarks and quotations of Judge Stephens in his opinion [Rec. 125] clearly and sufficiently set forth the law in this regard:

> "The complaint is subject to much the same objection as called forth the following from the court in the case of Van Weel v. Winston, 115 U. S. 228:
>
> 'It (the complaint) is full of the words "fraudulent" and "corrupt", and general charges of conspiracy and violation of trust obligations. Mere words, in and of themselves, and even as qualifying adjectives of more specific charges, are not sufficient grounds of equity jurisdiction, unless the transactions to which they refer are such as in their essential nature constitute a fraud or a breach of trust for which a court of chancery can give relief.'
>
> See, also, Fogg v. Blair, 139 U. S. 127."

Furthermore, all parties were citizens and residents of California. Privileges of United States citizens were not involved. All petitioner's rights as a citizen of the State of California were open to him. Of some he took advantage.

III.

Accepted and Usual Course of Judicial Proceedings Followed by the Circuit Court of Appeals and District Court.

1. Dismissal of Petitioner's Bill in Equity Proper Procedure.

Petitioner contends that the Circuit Court and the District Court did not follow the correct judicial procedure. (Pet. 43.) The procedure followed by respondents in moving for a dismissal of the bill in equity and by the District Court in dismissing said bill was in conformity with the Rules of Civil Procedure of the District Court of the United States. The old equity rules have been superseded by the new rules of procedure which govern all suits whether cognizable in law or equity.

> Rule 1, Rules of Civil Procedure of the District Court of the United States.

The rules provide a method of attacking a complaint or bill upon the ground that the court has no jurisdiction. This method was followed by respondents.

> Rule 12b, Rules of Civil Procedure of the District Court of the United States.

2. Dismissal of Bill in Equity Without Leave to Amend Not Error.

In subdivision IV of his brief (Pet. 45) petitioner claims that the District Court could not dismiss his action without leave to amend. Such a procedure, petitioner claims, would be a denial to him of due process of law. Petitioner cites, in support of his claim, *U. S. v. Lehigh Valley R. R. C.*, 220 U. S. 257, 31 Sup. Ct. 387.

Far from upholding petitioner's claim, this case affirms the rule that "the allowance of amendments to pleadings is discretionary with a trial court . . .," saying, "the principle is elementary . . ." (page 390 of Sup. Ct.) In that particular case the principle was held not applicable because "the discretion of the court below was controlled by the action of this Court (Supreme Court of the United States). The case of *Kendig v. Deane*, 97 U. S. 423, cited by petitioner, is easily distinguished.

In any event, no abuse of discretion was claimed by petitioner when he appealed to the Circuit Court of Appeals. None is claimed here, nor can be. All the material facts (and many more immaterial and scandalous assertions) were placed before the District Court by the pleadings, affidavits and motions. No amendment could have added anything further.

Conclusion.

It is respectfully submitted that there are no special or important reasons for granting a writ of certiorari in this case. The Circuit Court of Appeals and the District Court correctly determined that the District Court had no jurisdiction. Their determination is in accord with the decisions of the United States Supreme Court, the Circuit Courts of Appeal and local courts. The Circuit Court of Appeals and the District Court followed the accepted and usual course of judicial proceedings.

CHAS. F. BLACKSTOCK,

WM. A. REPPY,

Attorneys for Respondent.